

REMARKS

Claims 1, 4, 7-10, 12-13, 16 and 18-21 remain cancelled without prejudice or disclaimer of the subject matter therein.

Claims 2, 3, 11, 14, 15, 17, and 22-24 are rejected as anticipated by Bosch (U.S. Patent No. 4,441,707). At pages 2 and 3 of the office action it is urged that Bosch's tube 4 anticipates the tube of applicant's claims. Bosch's flexible line 4 is described at column 3, lines 44-60 which states

[f]lexible line 4 is preferably inelastic, and includes an interior, structural cord 23 (FIG. 5), and a self-lubricating exterior sleeve or coating 24 which permits it to glide smoothly through tube 6. In this example, line 4 comprises nylon coated aircraft cable, which is extremely strong, yet sufficiently flexible to permit handles 5 to be reciprocated without being too stiff or otherwise creating substantial internal resistance. The free ends 25 of tube 6 position the ends of line 4 and the handles 5 at the sides, and slightly forward of the wearer. Hence, when the exerciser 1 is used, and line 4 is thereby extended taut and reciprocated with a forwardly pumping action of the user's arms, as illustrated in FIGS. 3 and 4, there is a naturally formed gap or clearance 28 (FIG. 4) between the flexible line 4 and the forearms 29 of the user 30, which avoids contact and abrasion therebetween.

Applicant's tube is recited as stretchable along substantially its entire length. Bosch's line 4 is not stretchable along its length, it is inelastic and extended taut to cause the desired pumping action. The coating 24 or exterior sleeve is likewise not stretchable along its length. The stretchable feature of applicant's tube highlights the different exercise action of the device of applicant's claims from Bosch's device. Applicant's independent claims 22 and 24 have been amended to clarify that the tube is stretchable (see applicant's disclosure at paragraph 16 and Fig. 2) and is a resistance tube. This feature emphasizes the differences between applicant's claimed invention and Bosch.

Claims 2-3, 5-6, 11, 14-15, 17 and 23 depend, directly or indirectly from one of independent claims 22 and 24. The obviousness rejection of claims 5-6 urges that the rounded ends (claim 5) is an obvious design choice. The assertion of obviousness must be based on the prior art in order to establish a prima facie case of obviousness. Since there is no prior art teaching of the rounded corners, withdrawal of the rejection of claims 5-6 is requested.

It is submitted that all of the claims (Nos. 2-3, 5-6, 11, 14-15, 17 and 22-26) are in condition for allowance and entry of the present amendment and allowance of the application is, respectfully, requested.


New independent claim 25 is presented and includes the requirement of the tube being stretchable along substantially its entire length. New claim 26 further requires the tube to be rubber (see applicant's specification at paragraph 12). The features of claims 25-26 are not taught or suggested in the prior art.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (28022-95505).

Respectfully submitted,

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